

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CLAYTON LANDON BARNET,

Plaintiff,

v.

No. CV 18-381 MV/CG

FNU LNU, et al.,

Defendants.

ORDER ON PENDING MOTIONS

THIS MATTER is before the Court on Plaintiff Clayton Landon Barnett's *Application for Leave to Proceed in District Court Without Prepaying Fees or Costs*, (Doc. 5). Because the Court grants the application, the filing fee for this civil rights complaint is \$350.00. Based on the information about Plaintiff's financial status, the Court will waive an initial partial payment pursuant to § 1915(b)(1). Plaintiff is still required to pay the full amount of the filing fee pursuant to § 1915(b)(1). Failure to comply with this order may result in dismissal of the complaint without further notice.

Also before the Court is Plaintiff's *Motion for Service by U.S. Marshals*, (Doc. 9). Because Plaintiff is a prisoner proceeding pro se, the Court is obligated to conduct a preliminary screening of the Complaint. See 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e)(2). Whenever a prisoner brings a civil action against government officials, the Court is obligated to screen the prisoner's complaint or petition. 28 U.S.C. § 1915A.

Section 1915A states:

The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a

governmental entity or officer or employee of a governmental entity. . . .

On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A(a) and (b). The Court has a similar obligation to screen the complaint when a pro se plaintiff is proceeding without prepayment of fees and costs under 28 U.S.C. § 1915(e)(2):

Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

(A) the allegation of poverty is untrue; or

(B) the action or appeal—

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

Requests for service of process, discovery, and submissions of proof are premature and unavailable prior to the Court's completion of its screening obligation. See *Jones v. Bock*, 549 U.S. 199, 213-214 (2007). Therefore, Plaintiff's *Motion for Service by U.S. Marshals*, (Doc. 9), will be denied as premature. If Plaintiff's Complaint is not dismissed on initial screening, the Court will enter further orders governing service of process, discovery, and scheduling.

IT IS THEREFORE ORDERED:

(1) Plaintiff's *Application for Leave to Proceed in District Court Without Prepaying Fees or Costs*, (Doc. 5), is **GRANTED** and the initial payment is **WAIVED**;

(2) Plaintiff shall file monthly financial certificates and make monthly payments of twenty percent (20%) of the preceding month's income credited to his account until the fee is paid or show cause why the payment should be excused;

(3) the Clerk is directed to provide Plaintiff with two copies of the post-filing financial certificate; and

(4) Plaintiff's *Motion for Service by U.S. Marshals*, (Doc. 9), is **DENIED** as premature.

IT IS SO ORDERED.



THE HONORABLE CARMEN E. GARZA
CHIEF UNITED STATES MAGISTRATE JUDGE